IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WEALTH TAX APPEAL NO 272 OF 2003

The Commissioner of Wealth Tax-3 Mumbai)..Appellants

Versus

M/s.Spellbound Trading Pvt.Ltd.,)..Respondents

Mr.Vimal Gupta with Mr.P.S.Sahadevan for appellants.

Mr.J.B.Mistry with Mr.Raj Darak for respondents.

Coram : F.I.Rebello & R.S.Mohite,JJ

Date : 12.12.2007.

PC

1. Admit.

2. Revenue has preferred this appeal on the following questions of law :-

(a) In the facts and circumstances of the case and in law, whether the rent and deposits received by the intermediary tenant from the ultimate user of the premises or the rent and deposit received by the assessee from the intermediary tenant, who never occupied the premises is to be taken for the computation of the net

wealth of the assessee for valuation under Rule 3 of part B of Schedule III of the Wealth Tax Act, 1957 ?

(b) Whether the assessee could be allowed deduction u/s 2(m) of the Wealth Tax Act, 1957 of the debts owed on pro-rata basis without the assessee establishing that the debts were incurred in relation to assets which formed part of the net wealth of the assessee ?

3. In so far as question (a) is concerned, the same does not survive in view of the judgment of this Court in **The Commissioner of Income Tax-3 v. M/s.Akshay Textiles Trading** decided in Income Tax Appeal No.607 of 2005 on 17.10.2007.

. In so far as question (b) is concerned, we find that the said question was never raised in the memo of appeal. The said question was also not answered by the Tribunal. The Tribunal in fact answered some non existing question considering the appeal memo as drafted by the appellant.

4. The learned Counsel for the respondents draws our attention to the provisions of Section 27-A of the Wealth Tax Act to point out that the appeal can be entertained by this Court only on a substantial

question of law to be submitted, which must arise from the order of the Tribunal. The question as framed does not arise from the issues involved.

. The proviso to sub-section 5 to Section 27-A however, permits this Court to frame any other substantial question of law not formulated if the Court is satisfied that the case involves such question.

5. In the instant case we have perused the order of the Assessement officer. One of the contentions raised by the respondents before the Assessment officer was in respect of the debt of sum of Rs.21,94,144/- considering section 2(m) of the W.T.Act, 1957. The Assessing officer for reasons recorded, rejected the claim by holding that it was not incurred for acquisition of assets chargeable to Wealth tax.

. The respondents aggrieved, preferred an appeal. One of the grounds raised was in the matter of proportionate debts, the very question has been decided by the assessing officer. The Commissioner (Appeal) in paragraph 4.1 considered the said contention, and in paragraph 4.3 answered the said issue in favour of the assessee and accordingly, partly allowed the appeal.

6. Revenue aggrieved, preferred an appeal before ITAT. In ground (b) the liability of Rs.21,94,144/- was set out but it was wrongly stated as being deposit received from the tenants for letting out the properties. The other ground which was framed infact, did not arise from the order of the Commissioner (Appeal). The Appeal was listed with other Appeals. On common questions framed ITAT disposed off the various appeals including the appeal filed by the appellants herein. The three grounds which were raised in fact, were most extraneous in so far as respondent was concerned.

7. Based on the language of Section 27-A, learned Counsel for the respondents justifiably contended that the question must arise from the order of the Tribunal. The question before us is whether on account of failure by revenue to frame the proper ground in the appeal memo, is there power in this court, after it has been brought to it notice that an issue arose which required to be answered but had not been properly raised as required to preclude itself from considering the said issue.

8. In our opinion, procedure as has been explained by the Supreme Court on various occasions is not meant to trip justice but to aid the cause of justice. Wrong drafting by the draftsman cannot result in this Court being prevented from looking at

the correct issue and having the issue answered. Law wold be much poorer if this Court precluded itself from doing so. Merely because the draftsman for some reason has not applied his mind in framing the correct question or grounds. Apart from that the proviso to sub-section 27(A) (5) will confer full power on the Court.

9. Learned Counsel for the appellants is correct in pointing out that the order of the Commissioner's appeal does not disclose any reason as to why the appeal was allowed on the issue of proportionate debts in the sum of Rs.21,94,144/-. We are here not concerned whether Commissioner's decision was right or wrong. The Commissioner (Appeal) was the appellate authority. If the appellate authority seeks to reverse the finding of the authority below, it was bound to give reasons to its conclusion. We find the order does not disclose any reason for coming to the conclusion arrived at. Considering this aspect of the matter, the ends of justice would suffer if the order of the Tribunal is not set aside and the matter remand back for the Tribunal.

10. In our opinion, therefore, the order of the Tribunal is set aside. The matter is remanded back to the Tribunal. It will be open for the appellants

to raise additional ground and thereafter for the Tribunal to decide the matter according to law. Considering the above, impugned order is set aside. Matter is remanded to the Tribunal for de novo consideration. We make it clear that the liberty has been granted to the appellants for amending the appeal memo which is limited to the issue which has been discussed here and to no other issue.

(R.S.Mohite,J) **(F.I.Rebello,J)**